

U.S. Army Corps of Engineers **Buffalo District** CELRB-TD-R

Public Notice

Applicant: Town of

Development

Published: September 9, 2014

Tonawanda and Zaepfel Expires: October 9, 2014

Application No: 2005-00510

Section: NY

All written comments should reference the above Application No. and be addressed to:

Attn: Molly Connerton

US Army Corps of Engineers, Buffalo District 1776 Niagara Street Buffalo, NY 14207

THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC REGARDING THE WORK DESCRIBED BELOW. NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED AT THIS TIME.

Application for Permit under Authority of Section 404 of the Clean Water Act (33 U.S.C. 1344).

APPLICANT: Zaepful Development (ZDC), 5505 Main Street Suite A, Williamsville, NY 14221 and the Town of Tonawanda, 2919 Delaware Avenue, Room 20, Kenmore, NY 14217

WATERWAY & LOCATION: Federal jurisdictional wetlands and Two Mile Creek tributary, located North of the Interstate 290, East of CSX Railroad and West of Two Mile Creek Road, in the Town of Tonawanda, Erie County, New York

LATITUDE & LONGITUDE: Latitude North: 42.99

Longitude West: -78.89

EXISTING CONDITIONS: The 94 acre parcel for the proposed development is situated north of Interstate 290 and east of CSX railroad, The entire parcel has a history of major soil disturbance from borrow to construct various roads (I-290), Two Mile Creek Road, East Park Drive: a 42 inch sanitary sewer line, a 24-inch waterline, a landfill access road, an old demolished incinerator facility and an existing telecommunication tower. A portion of the site is still used as a Town composting facility. The wetlands on site are located in highly disturbed areas resulting from the historical borrow activities. Numerous disturbances have caused the site to be colonized by invasive wetland species including common reed (Phragmites australis), cattail (Typha angustifolia), and purple loosestrife (Lythrum salicaria).

Description of delineation of waters of the US, if applicable: A wetland delineation was completed at the site on June 10, 2013 and was officially verified on September 12, 2013 by USACE personnel. 31 wetlands were delineated in the project area. An approved jurisdictional determination was made indicating the location contained 8 wetlands (8.17 total acres) of federally jurisdictional waters and 1,655 linear feet of stream (Two Mile Creek). 23 wetlands (6.35 total acres) were determined to be isolated and not subject to federal jurisdiction.

PROPOSED WORK: The applicants, the Town of Tonawanda and ZDC are proposing a joint project to impact a total of 8.17 acres of federally jurisdictional wetlands in association with the proposed industrial park referred to as the North Youngmann Commerce Center. The 94 acre parcel is zoned as Waterfront Industrial District which allows a number of uses to include industrial manufacturing. Of the 94 acres, 60 acres are under the Town of Tonawanda ownership and the balance (34 acres) is being acquired by ZDC. The applicants are requesting the issuance of the same Individual Permit and Water Quality Certification for the joint project.

Impacts to the 8.17 acres of wetlands on the joint project will result from development of building structure, parking and landscape, infrastructure, road and utility construction. The wetland impacts are broken down by project, 5.71 acres for the ZDC project and 2.46 for the Town of Tonawanda project. The ZDC project will include the construction of a 264,000 warehouse, 32,000 square feet of production area and 14,000 square feet of general office space. The Town project will be responsible for necessary infrastructure including a 4,600 foot asphalt roadway to include the spanning over Two Mile Creek, a major access road (Pirson Parkway). In addition the Town parcel will include the installation of a new 12 inch PVC waterline for the development, realignment of an existing 24 inch waterline, a 42 inch sanitary sewer and the demolition of the Town of Tonawanda digester and the construction of an access road to the Town landfill located north of the adjacent National Grid transmission corridor.

PROJECT PURPOSE

Basic: Commercial Development

Overall: To construct a mixed use commercial and light industrial manufacturing facility. Water Dependency Determination The discharge of fill material into wetlands for the purpose of constructing the Project is not a water dependent activity because it does not require access or siting within the special aquatic site in question to fulfill its basic purpose. Therefore, practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise.

AVOIDANCE AND MINIMIZATION INFORMATION: The applicant has indicated that there are no other offsite alternatives in Western New York to accomplish the goals of this development. The site proposed for the development is the only site available in the Town of Tonawanda with zoning that allows for the unique opportunities and proximity to transportation links including both highway and rail which are not available at any other location within the Town of Tonawanda corporate boundaries.

The proposed plan to impact the wetlands for a total of 8.17 acres on site for building structure, road and utility structure, and parking or landscape is the preferred alternative and no other

onsite alternative plans were proposed. All of the wetlands are located in highly disturbed areas created as a result of historical borrow (excavation activities) and are of low quality that are dominated by invasive plant species including (*Phragmites australis, Lythrum salicaria and Typha angustofila*). The applicant has indicated the proposed stormwater management plan will replace any functions that these low quality wetland areas serve.

PROPOSED MITIGATION: To mitigate for the proposed impacts to 8.17 acres of wetlands the applicant has proposed the construction of mixed emergent, wet meadow and emergent marsh wetland habitat and scrub/shrub wetland habitat at a ratio of 1:1 or greater on a parcel located in the same watershed, south of Cookson Road and adjacent to Tonawanda Creek, in the Town of Alexander, Genesee County, New York.

Location and details of the above described work are shown on the attached maps and drawings.

Comments or questions pertaining to the work described in this notice should reference the Application Number and be directed to the attention of **Molly Connerton**, who can be contacted at the above address, by calling (716) 879-4304 or by e-mail at: molly.a.connerton@usace.army.mil. A lack of response will be interpreted as meaning that there is no objection to the work as proposed.

Water Quality Certification (or waiver thereof) from the New York State Department of Environmental Conservation.

The project permit area, as shown on Sheet 1 of 16, does not appear to be located within a archaeologically sensitive areas as identified by the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) or properties listed in, or eligible for listing in, the National Register of Historic Places based on preliminary findings. This notice constitutes initiation of consultation with the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) per Section 106 of the National Historic Preservation Act. All currently available historic resource information pertaining to this proposed project if any has been provided to the NYSOPRHP. Additional information concerning historic properties should be submitted to the Corps before the end of the comment period of this notice. The Corps will forward that information to the NYSOPRHP for their review.

Pursuant to Section 7 of the Endangered Species Act (16 U.S.C. 1531), the Corps of Engineers is consulting, under separate cover, with the USFWS to evaluate any potential impacts to:

Northern Long Eared Bat (Myotis sepentrionalis) and to ensure that the proposed activity is not likely to jeopardize their continued existence or result in the destruction or adverse modification of critical habitat.

This notice is promulgated in accordance with Title 33, Code of Federal Regulations, parts 320-330. Any interested party desiring to comment on the work described herein may do so by

submitting their comments, in writing, so that they are received no later than 4:30 pm on the expiration date of this notice.

Comments submitted in response to this notice will be fully considered during the public interest review for this permit application. All written comments will be made a part of the administrative record which is available to the public under the Freedom of Information Act. The Administrative Record, or portions thereof, may also be posted on a Corps of Engineers internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any individual may request a public hearing by submitting their written request, stating the specific reasons for holding a hearing, in the same manner and time period as other comments.

Public hearings for the purposes of the Corps permit program will be held when the District Commander determines he can obtain additional information, not available in written comments, that will aid him in the decision making process for this application. A Corps hearing is not a source of information for the general public, nor a forum for the resolution of issues or conflicting points of view (witnesses are not sworn and cross examination is prohibited). Hearings will not be held to obtain information on issues unrelated to the work requiring a permit, such as property ownership, neighbor disputes, or the behavior or actions of the public or applicant on upland property not regulated by the Department of the Army. Information obtained from a public hearing is given no greater weight than that obtained from written comments. Therefore, you should not fail to make timely written comments because a hearing might be held.

The decision to approve or deny this permit request will be based on an evaluation of the probable impact, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments

are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SIGNED

Diane C. Kozlowski Chief, Regulatory Branch

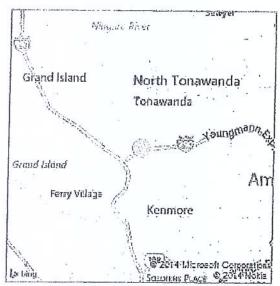
NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 30 days from the date of issuance.

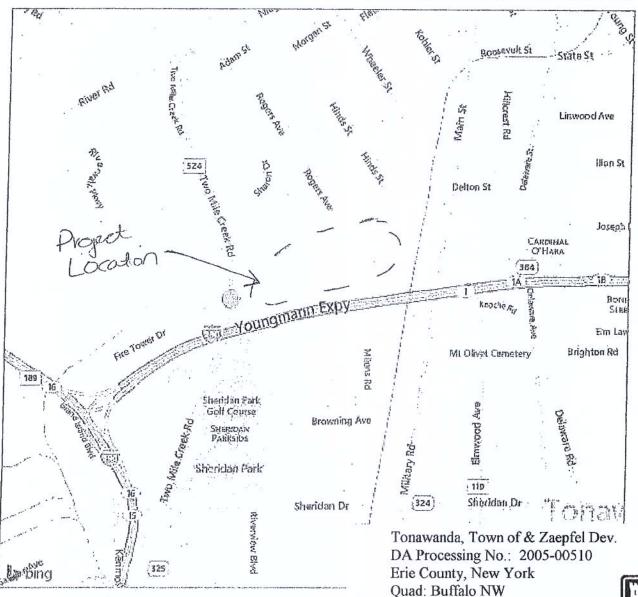
la bing Maps

Two Mile Creek Rd, Tonawanda, NY 14150

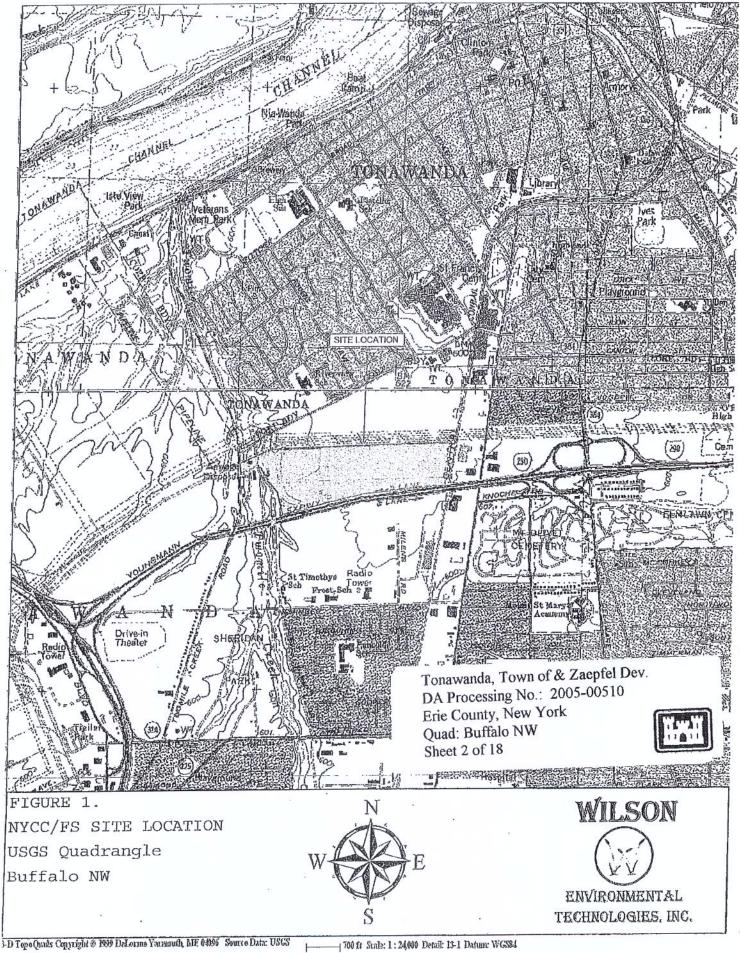
Location of Proposed North Youngmann Commerce Center

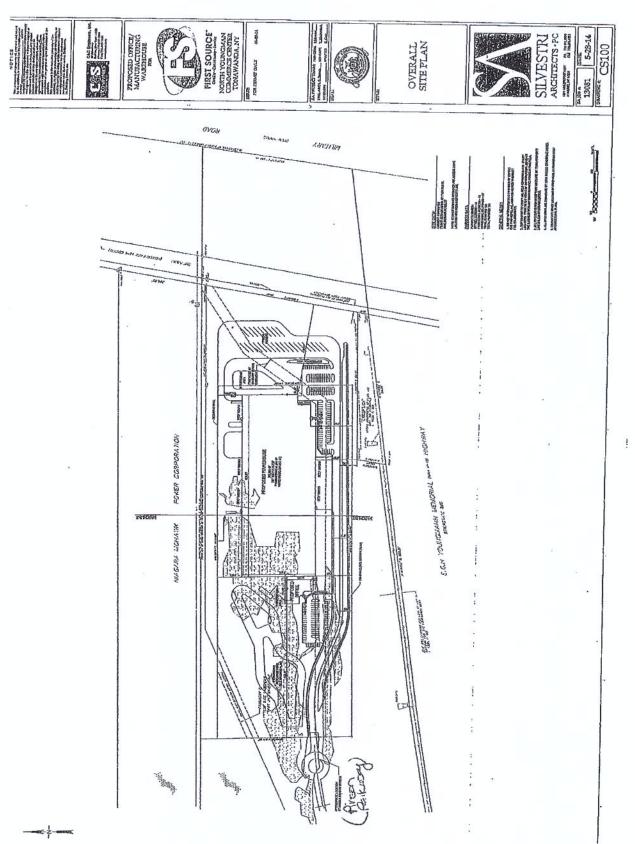
On the go? Use **m.bing.com** to find maps, directions, businesses, and more





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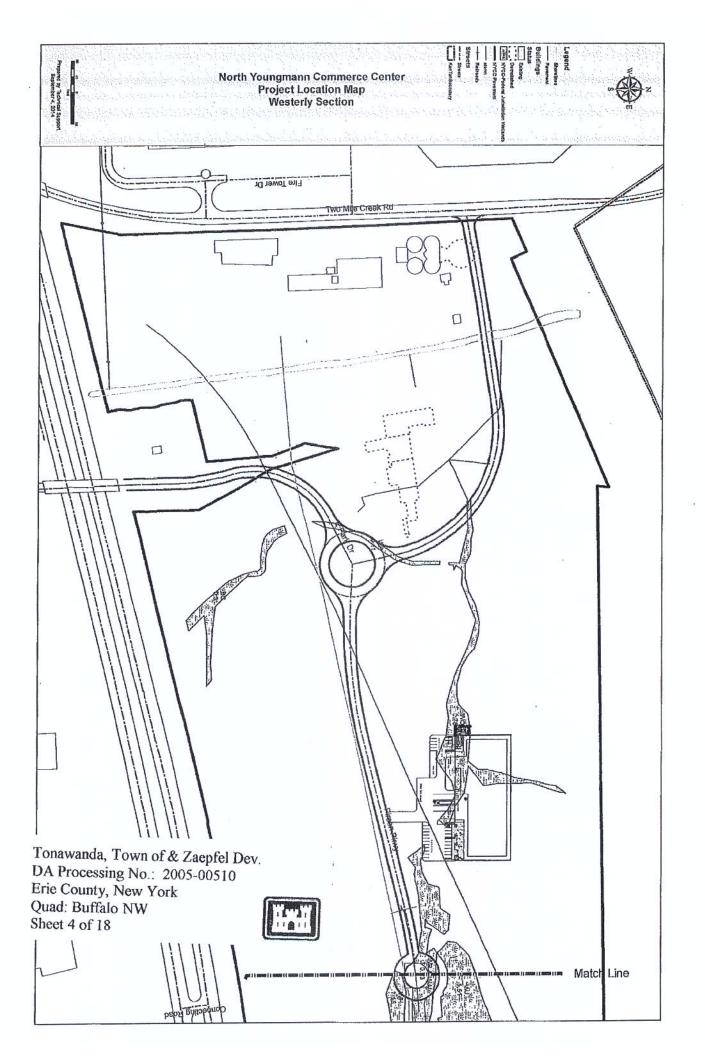


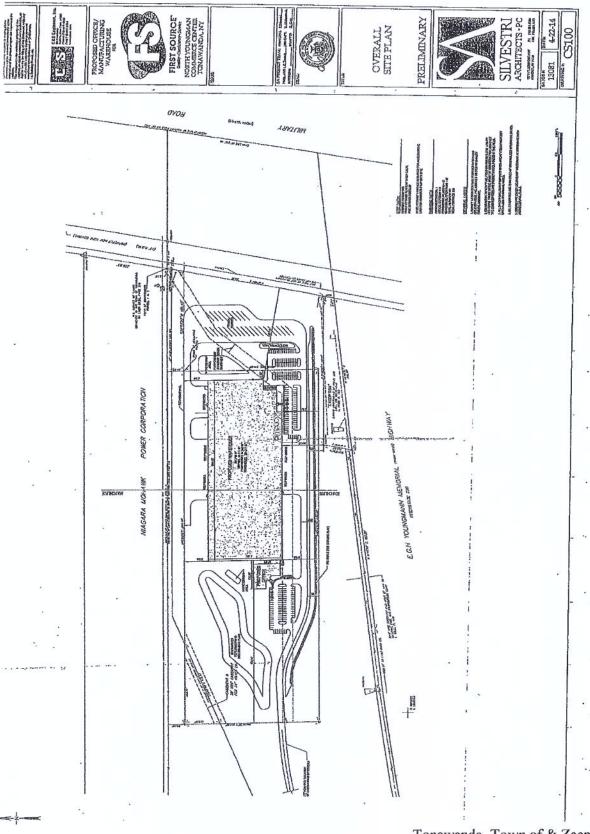


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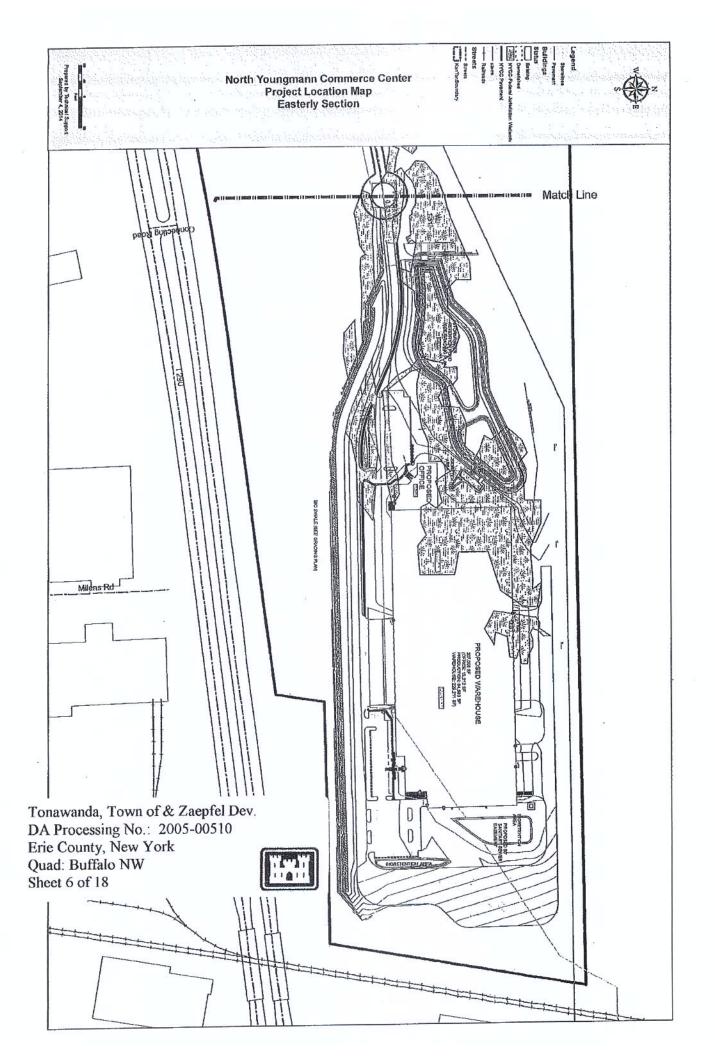


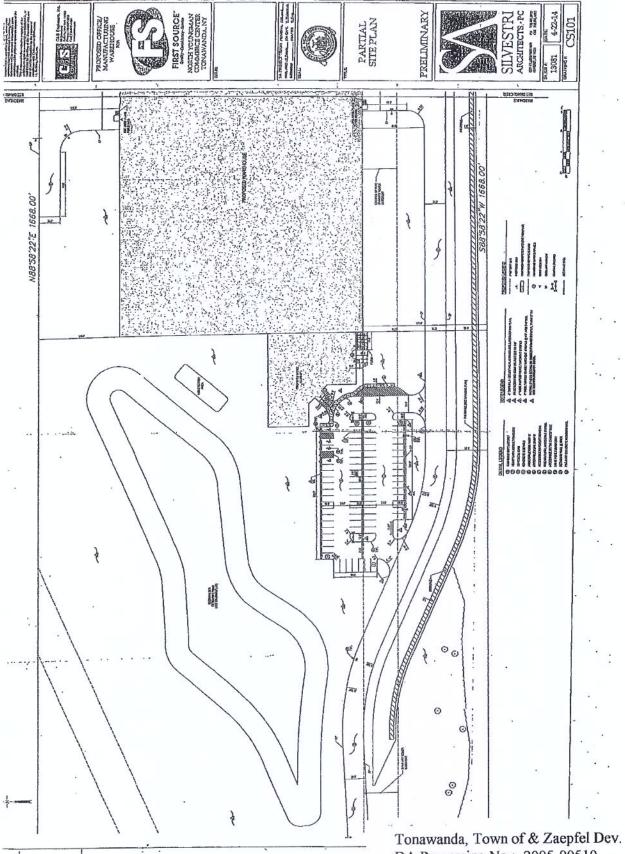




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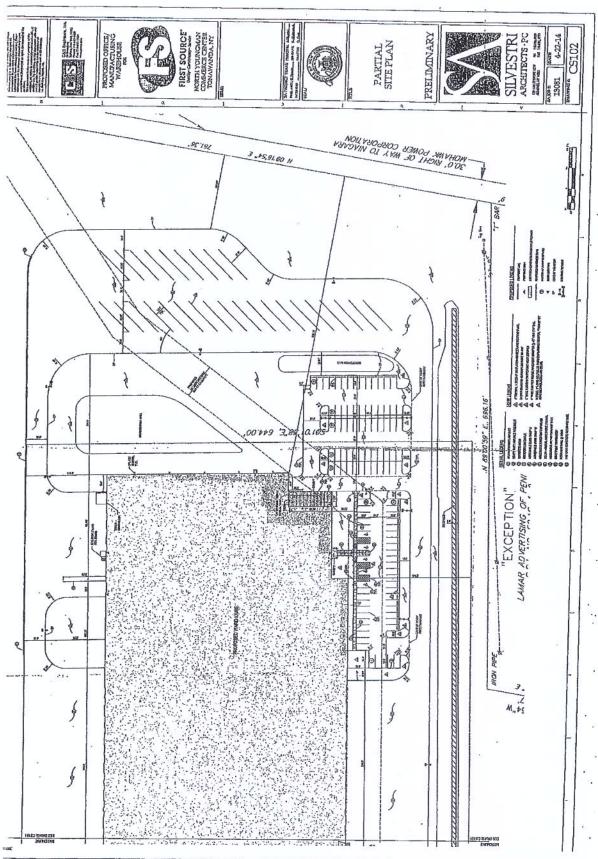


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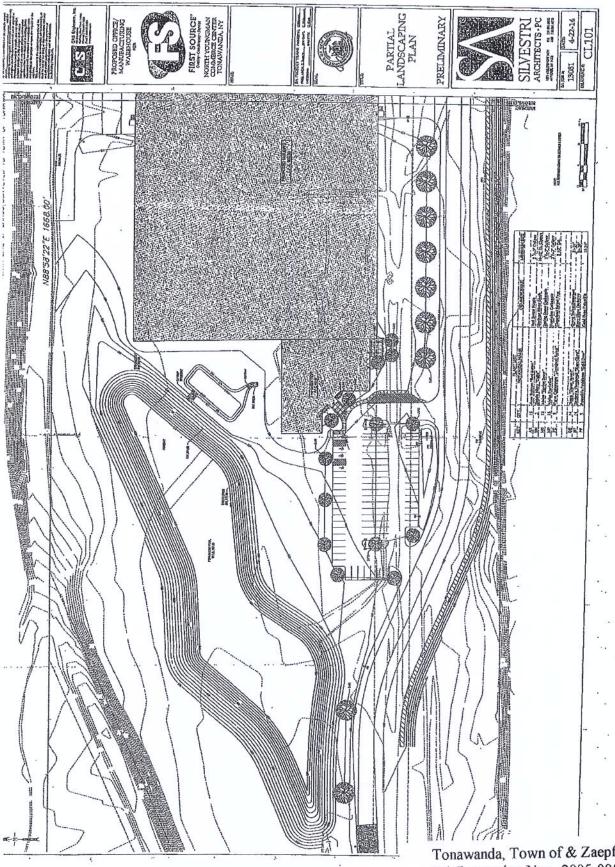




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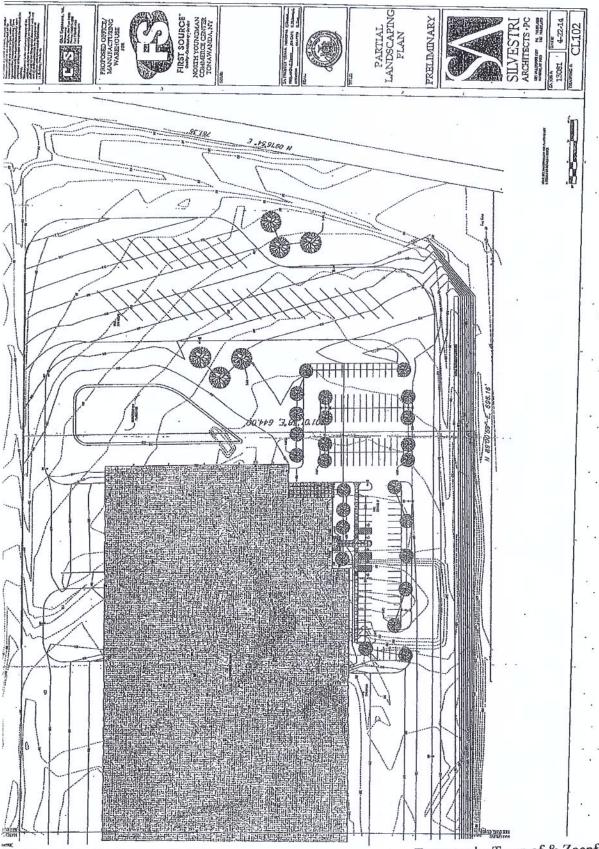




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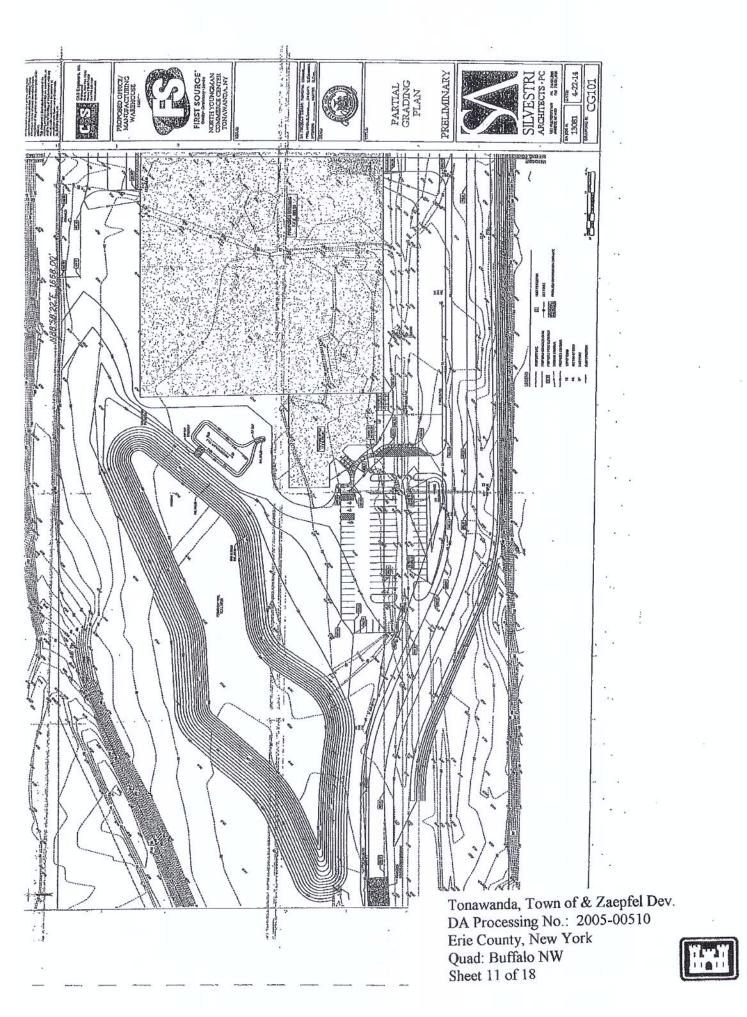


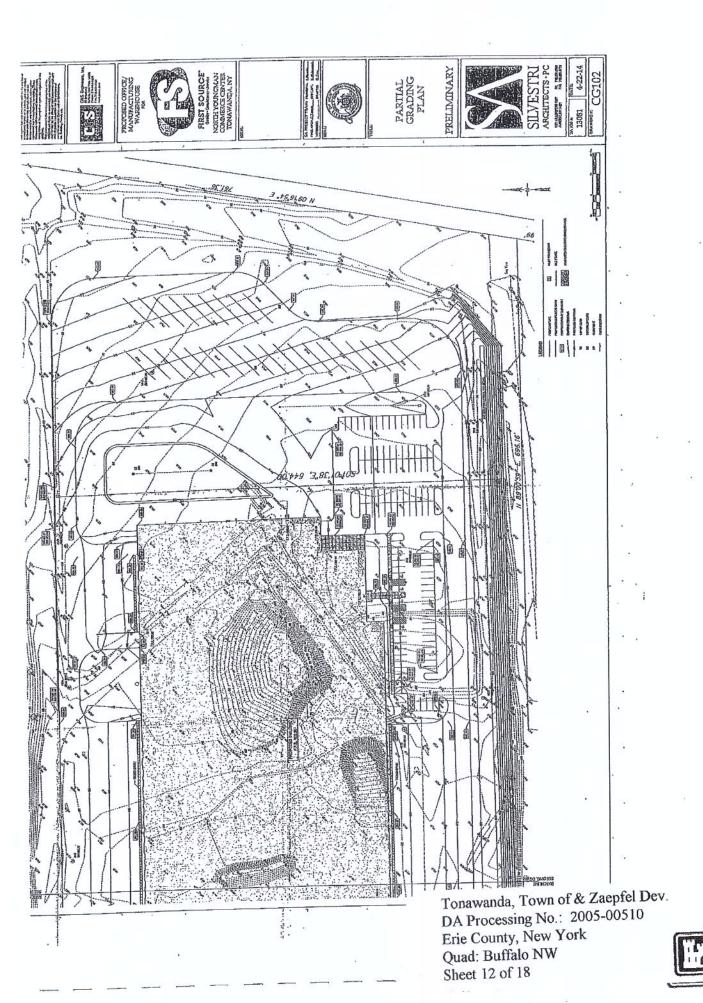


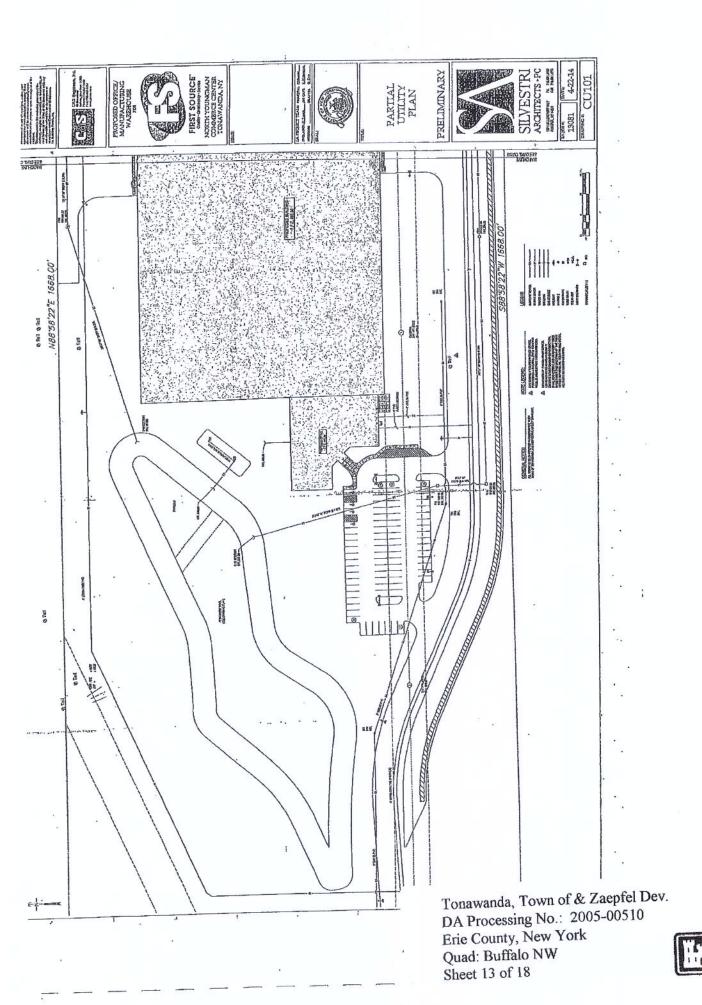
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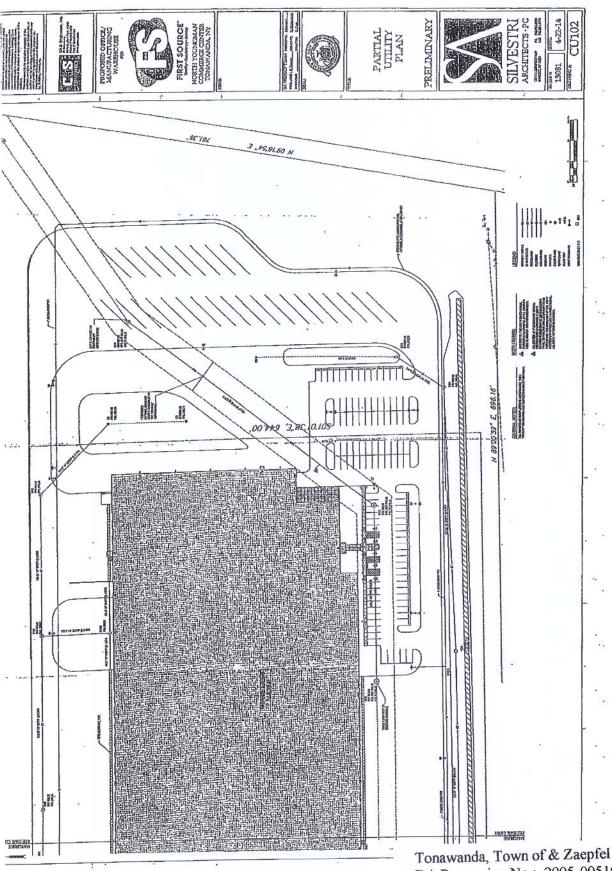
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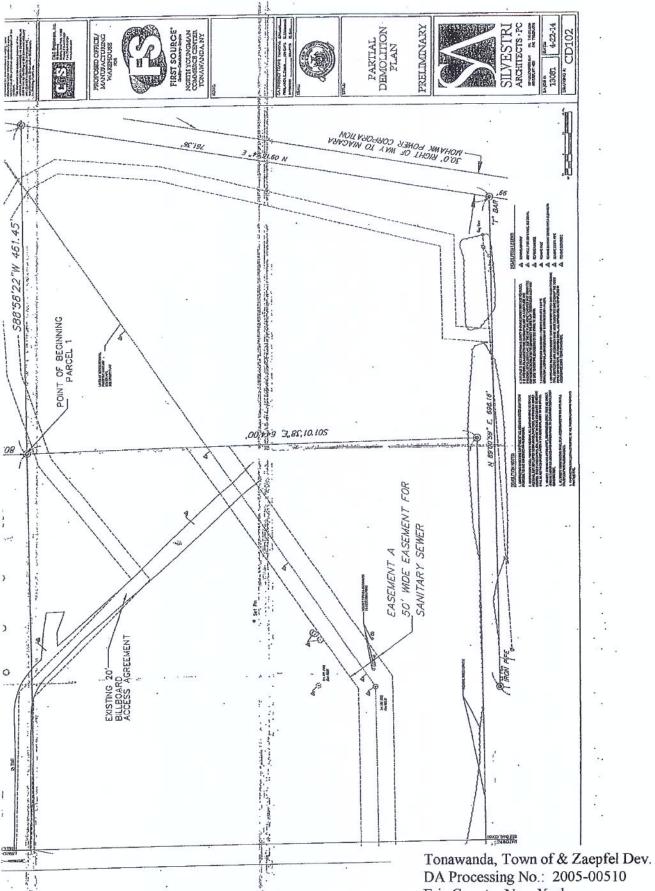




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